

Minutes: Regular Meeting of Milpitas City Council
Date of Meeting: January 18, 2005
Time of Meeting: 6:00 p.m. (Closed Session
7:00 p.m. (Public Business)
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

Mayor Esteves called to order the adjourned meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano and Polanski. Councilmember Livengood was absent.

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda:

1. Conference with Legal Counsel: Existing Litigation
(Pursuant to Government Code Section 54956.9(a))
Milpitas v. Turner Construction et al., Santa Clara County Superior Court

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano and Polanski present. Councilmember Livengood was absent.

There were no Closed Session announcements.

A member of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MOTION to approve the City Council minutes of December 21, 2004, and January 4, 2005, including joint meetings with the Redevelopment Agency, as submitted.

M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)

Councilmember Polanski abstained from approval of the December 21, 2004, minutes.

MOTION to approve the Schedule of Meetings as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

There were no presentations; however, Mayor Esteves said he would like the Government Finance Officers Association Award scheduled on the next agenda.

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less. .

Bill Dale, Milpitas Amateur Radio & Electronics Society, invited everyone to visit the new HAM Radio Station set-up at Fire Station 1 (located in the modulars behind the station) every Saturday morning from 9:00 a.m. to Noon.

Interim City Manager Charles Lawson announced that the Planning Commission meeting scheduled for January 26, 2005, will begin at 8:00 p.m. instead of 7:00 p.m. because of the 50th Anniversary Time Capsule Ceremony that would begin at 7:00 p.m. that evening. Mayor Esteves said January 26, 2005, was also the time capsule event at City Hall.

Councilmember Polanski announced the 50th Anniversary Committee met for the last time, she thought they did an outstanding job, and she was looking forward to the celebration on January 26, 2005, at 7:00 p.m. and the dedication of the time capsule. Councilmember Polanski reported the 50th Anniversary Committee did come in under budget and a consent item on the last Council agenda approved using \$15,000 of the savings towards the commissioner recognition dinner. Councilmember Polanski further reported she attended the Community Advisory Commission meeting, they did incorporate the direction from the Council to include consideration of invocations into their work plan. Councilmember Polanski asked if the City Attorney would share with the CAC his memo regarding invocations that was previously given to the Council.

Mayor Esteves thanked and congratulated the Milpitas Executive Lions Club for participating in the Sunnyhills Community Breakfast and for all their service to the City. Mayor Esteves congratulated Matthew Au, Troop 92 Eagle Scout, stating that he attended the Court of Honor and would be making a presentation to Matthew at the next Council meeting.

**ANNOUNCEMENT OF
CONFLICT OF INTEREST**

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest, to disclose it for the record. There were none.

MOMENTS OF REFLECTION

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council. There were none.

AGENDA

City Manager Lawson requested item 10 be removed from the agenda (Sign Code Task Force Status Report) and commented that it would come back at a later date. Mayor Esteves said he had hoped the item would come back as soon as possible since the work of the task force was completed. Vice Mayor Gomez said he thought it wasn't supposed to come back for 90 days as there still were some issues to be worked out. Councilmember Giordano noted that with three new Planning Commissioners appointed last week, staff may want to look at redirecting it through the Planning Commission before it returns to the Council. Mayor Esteves removed item 3 (Support for Measure A) from the agenda stating that he needed more information. Vice Mayor Gomez removed item 6 (Creation of a Council Finance Subcommittee).

MOTION to approve the agenda as amended by the removal of items 3, 6, and 10.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

Vice Mayor Gomez requested items 12 and 16 be removed for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 12 and 16, in accordance with the staff recommendations.

M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)

**3.
Support for Measure A**

Item removed from the agenda by Mayor Esteves.

**6.
Create Finance Subcommittee**

Item removed from the agenda by Vice Mayor Gomez.

**10.
Sign Code Task Force
Status Report**

Item removed from the agenda by staff at the request of Councilmember Livengood.

***11.
Urban Runoff**

Directed staff to continue working with Regional Water Quality Control Board staff to cooperatively achieve compliance in lieu of additional permit revisions, and to oppose any

- Permit Amendment** permit revision not in the interest of Milpitas (particularly in the redevelopment area) at the anticipated board amendment hearing.
- *14.
Classification Plan
Amendment** Adopted Resolution No. 7500 amending the Classification Plan to abolish two classifications—Executive Secretary to the City Manager and Executive Secretary to the Assistant City Manager—and combine them into a revised classification of a confidential, non-exempt, Executive Secretary classification as shown in the two Exhibits included in the Council's agenda packets.
- *15.
Milpitas Employees
Association MOU** Adopted Resolution No. 7501 amending the current Memorandum of Understanding for the period January 1, 2003, through December 31, 2005, between the City of Milpitas and the Milpitas Employees Association pertaining to meeting State requirements for water distribution operations, requiring higher level training and certification for employees assigned to work on the City's water system as required for Water Distribution Operators (D3 & D5).
- *17.
Mobile Computer Upgrades** Authorized the City Manager to execute a purchase order in an amount not to exceed \$82,746.30 for Mobile Computer upgrades from Data911 Systems.
- *18.
Damon S. Williams Associates
(Project No. 7100)** Authorized the City Manager to execute the agreement amendment with Damon S. Williams Associates, in the amount of \$14,075, subject to approval as to form by the City Attorney, for additional services to include the development of technical supporting information necessary for City staff to submit a Pre-Disaster Mitigation grant application for the South Milpitas Water Line Replacement, City Project 7098 for which the preliminary cost is about \$1.4 million.
- *19.
Asphalt Pavement Patching and
Repair (Project No. 4182)** Authorized the City Manager to execute an amendment to extend the contract one additional year with the Wattis Construction Co., Inc. to December 19, 2005, subject to approval as to form by the City Attorney, for asphalt pavement patching and repair of City streets when City crews are over extended on other jobs and unable to respond in a timely manner.

PUBLIC HEARINGS

- 1.
Flag Ceremony Request** City Manager Lawson reviewed the request from Boy Scout Troop 101 to hold a flag ceremony at the Higuera Adobe on January 29, 2005. Mr. Lawson noted that the Council had approved similar requests from this group in the past.
- Mayor Esteves opened the public hearing and invited comments. There were none.
- MOTION to close the public hearing.
- M/S: Giordano, Gomez. Ayes: 4 Absent: 1 (Livengood)
- MOTION to approve the application for a flag ceremony at the Higuera Adobe on January 29, 2005, from 9:30 a.m. to 12:00 Noon.
- M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)
- 2.
COPS Grant** Captain Dennis Graham reported the City had been awarded \$100,000 through the Citizen Options for Public Safety grant program and no city matching funds were required; the grant specified that the funds be used for police services; and police staff was requesting that the designated funds be used to purchase a TouchPrint Livescan system for fingerprinting, two portable NEC Child ID kits to fingerprint children, IVIS 2000 Badging station for creating identification cards for police and fire personnel, three Talon II moving/stationary radars, chemical agents for critical incidents, lights for AR-15 rifles, two Toughbook laptop computers, and tactical vests.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve an appropriation in the amount of \$100,000 into the Police operating budget.

M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:20 p.m.
CALL TO ORDER

RA2. Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano and Polanski. Agency/Councilmember Livengood was absent.
ROLL CALL

RA3. MOTION to approve the Redevelopment Agency minutes of December 21, 2004, and January 4, 2005, including joint meetings with the City Council, as submitted.
MINUTES

M/S: Giordano, Gomez. Ayes: 4 Absent: 1 (Livengood)

RA4. MOTION to approve the Agenda and Consent Calendar as submitted.
AGENDA

M/S: Giordano, Gomez. Ayes: 4 Absent: 1 (Livengood)

RA5. Acting Planning Manager James Lindsay acknowledge former Assistant City Manager Blair King for providing the framework for the project and various agreements, City Attorney Steve Mattas and his staff for providing the structure, Attorney Kit Faubion for helping turn around the Environmental Impact Report and others who were an integral part of the project. Mr. Lindsay presented in overview of the project beginning in June 2003 with the purchase of 35 acres of Elmwood property by the Redevelopment Agency. Mr. Lindsay reviewed the main points of the various agreements including the Memorandum of Understanding with KB Homes and the County of Santa Clara to implement the affordable housing provisions to provide 110 moderate income affordable units on site and a contribution of \$5 million by KB Homes for the development of 98 very low and low income affordable senior units off site.
ELMWOOD RESIDENTIAL DEVELOPMENT PROJECT

Project Planner Troy Fujimoto presented a walk-through of the project summary and introduced Ray Panek and Denise Cunningham of KB Homes South Bay, Inc.

Denise Cunningham showed an overall site plan of the proposed KB Homes Development stating that it was adjacent to I-880, included a future commercial site for auto dealerships, a residential section for single-family and townhomes, a future park on the Hetch-Hetchy, residential condominiums, and the Elm Park. Ms. Cunningham further stated the site was approximately 29 acres not including the commercial site; there would be 315 condominiums, 203 flats and townhomes, and 165 single-family homes; units ranging from one to three bedrooms with the single-family option for a third story; amenities included private community pools, rec centers, and open space; public amenities of over seven acres of park; and community goals included developing an economic, reliable community that included a mix of single-family, townhome, and high-density housing. Ms. Cunningham reported several community meetings were held and some of the concerns expressed by the neighborhood were parking, public access to the parks and parking, setbacks from the existing neighborhood to the new homes, traffic, enhancing the pedestrian connection to Commerce Street, the Elm Grove (and working in conjunction with the City to develop an appropriate mitigation plan), and park amenities (in response to the Parks, Recreation & Cultural Resources Commission).

Vice Mayor Gomez asked for clarification that the Homeowners Association would require cars to be parked inside the garages or on the driveways. Ms. Cunningham responded residents' vehicles would be required to be parked inside the garages; residents would not be permitted to park on alleys or in any of the guest spots. Mr. Panek added that the garage access was from a private alley, which could not be obstructed due to the need for emergency access; one of the first things that would be done when the Homeowners Association was established would be to adopt a set of rules for site parking control. Councilmember Polanski inquired if KB Homes had this type of parking requirement in any of its other developments. Ms. Cunningham responded it was a very common practice.

Mayor Esteves inquired how much guest parking would be provided for the whole complex. Ms. Cunningham said although she did not have the actual numbers, it met the City's requirements for guest parking. Mr. Panek said the project proposed approximately 125 to 130 guest spaces spread on the northern road and parking pockets on the loop streets throughout; there would be additional guest parking at the condominium site.

Councilmember Giordano, addressing the potential for overspill parking into the neighborhood, inquired if that had been addressed and if there was any way to mitigate that problem. Mr. Panek said the reason for the request for the northern portion street to be gated was to reduce the amount of traffic.

Ms. Cunningham further commented on community concerns raised by the neighborhood.

Mayor Esteves asked for clarification that the rest room building was not part of the construction plan. Ms. Cunningham explained that the facility had been located although there were still discussions on whether or not a rest room was wanted at the park.

Ms. Cunningham reported there had been some changes to the park plan by providing more open lawn area and perhaps removing some of the amenities and providing more of others. Mr. Panek said a lot of work was put into the project by the community and thanked them for their participation.

Ms. Cunningham provided a virtual tour that walked the Council and audience through the different types of homes being proposed and some of the amenities. Mr. Panek described some of the private amenities and the public amenities .

Vice Mayor Gomez, referring to the parkland on Parcel D, inquired what kind of amenities would be provided for the private development. Ms. Cunningham responded there would be an open space lawn area and perhaps a tot lot, rec center, kitchen facility, pool, and rest rooms.

Ms. Cunningham described the proposed park as linear along the Hetch-Hetchy right-of-way; described the proposed Elm Park maintaining the alignment of the Elm Grove; the park amenities that included the park trail, tot lot, and the location of the future rest room; basketball courts, picnic areas, shade structures, tennis courts, volleyball, bocce ball, a gathering area, and perhaps a future tot lot. Ms. Cunningham said the community had expressed its desire to perhaps not have the sand volleyball court and provide more grass area, also to group the picnic benches and shade structures at one end or the other to provide more grass/lawn area for activities; another community comment had been to have a full basketball court and perhaps just one half court as well as having one tennis court rather than two.

Vice Mayor Gomez commented that the park would go into the City's inventory and it was no secret that the City had a shortage of tennis courts; his preference would be to keep the two tennis courts, he would not have a problem with eliminating the sand volleyball court, and expressed concern for accessibility for the existing neighborhoods to get to the park. Ms. Cunningham said there was an emergency only access entrance from Palmer Street, which pedestrians could use. Mr. Panek added there would be a continuous trail from Abel Street for

access; one of the community concerns was having a crosswalk near the north/south road, which would be designed into the project; the trail would be on the north side of the parking lot allowing access into the park without having to cross the parking lot entry for the park. Ms. Cunningham said the park along Abel Street would contain a couple of tot lots as well as a location for a future rest room.

Councilmember Polanski said the Parks, Recreation & cultural Resources Commission was very much in favor of a rest room being built.

Councilmember Giordano said when she was on the Planning Commission, there were discussions regarding the rest room, and it was decided against having one; she questioned that the Parks Commission had recommended having one. Mr. Lindsay confirmed that the Parks Commission had recommended for the rest room location; at the Planning Commission meeting, staff had expressed concern over the ongoing maintenance issues that rest rooms bring; staff felt that having the infrastructure put in would allow putting in a rest room as a future phase if there was a demand for one. Mayor Esteves said he thought the rest rooms were always a given and asked what City parks were without rest rooms. Public Works Supervisor Dennis Cuciz responded that there are parks in the City without rest rooms (community parks). Vice Mayor Gomez said he would like to take a "wait and see" approach regarding the rest rooms to see if there would be a demand; he also expressed concern for some of the bad things that go on in rest rooms and for the cost of maintenance.

Bob Wetmore, Keyser Marsten Associates, said as part of the current process, he would be providing findings required by California Health & Safety Code Section 33433. Mr. Wetmore explained that four financial values had to be reported in order to be in conformance with the law; the first was the cost of the agreement to the Agency – as described in the report provided to the Council, it was concluded that the cost to the Agency for this transaction would be approximately \$275.75 million; the second value was the fair reuse value of the site – after completing the process, it was determined that the fair reuse value for this site would be in the high \$50 million range (\$56.5 million) and in addition, the developer in this transaction was obligated to spend \$5 million for the affordable housing for seniors project; the third value was a value at the highest and best use – it had been concluded there was no difference between what was essentially in the program and the highest and best use for urban land; and the fourth value was the price the developer was actually paying – the value that was proposed to be paid for this land was \$57.75 million and a \$5 million contribution for the off-site affordable housing (\$62.75 million total); so there was not a need in this reporting to explain any variance between what was being paid and what the fair reuse value was. Mr. Wetmore further stated one other item that had to be addressed in the report was how the sale of the property would assist in the elimination of blight; the report indicated that would be accomplished by this project and also that the project was fully consistent with the Midtown Specific Plan.

City Attorney Steve Mattas explained that the Disposition and Development Agreement (DDA) implemented the sale of the property from the County to the Agency and then from the Agency to KB, with the Agency retaining the one-acre site on which the Cracolice building was located. Mr. Mattas said the specific DDA before the Council was to supplement the Purchase and Sale Agreement that the County actually entered into with KB Homes, and was also to provide for certain financial aspects relevant to the transaction and the conditions of approval that the Council had. Mr. Mattas went on to explain the details of the DDA and reported that the DDA was an extensive document, and its purpose was to implement the County and Redevelopment Agency Purchase and Sale Agreement, which the Agency had approved.

Mr. Lindsay reviewed the recommendations listed on the agenda.

Mayor Esteves opened the public hearing and invited comments; it was Council consensus to allow each speaker up to three minutes.

Don Peoples, an adjacent property owner to the proposed site and President of the Downtown Association, said the Midtown Plan called for zoning that was very much different than any other part of the City; this was the first major project proposed in accordance with that Plan; in its finality it would be one of the largest neighborhoods in Milpitas; he felt it was a very *beneficial aspect for Milpitas' future development in the downtown area*; he could think of no other project that would be more instrumental to the success of the Midtown; he highly recommended it and looked forward to seeing it and its effect on the businesses on Main Street and the ability to make Elmwood less of an ominous effect on the rest of the community and recommended approval.

A man who resided on Palmer Avenue said the presentation answered many of his questions, he felt good about a lot of it, and asked how the widening of the sidewalk or the street would affect his house on Palmer. Mr. Lindsay responded he believed the sidewalk that was referred to was taking residents from Palmer through the project site and along the eastern edge of the north/south road; there were no street improvements planned for Palmer; and all improvements mentioned would be on the project site.

John Jay, South Main Street property owner, said he was one of the non-conforming businesses that would be severely impacted; however, for the community, he was in favor if it; he thought it important to pass something like this first because all of the businesses that want to grow on Main Street need a base of income and people to support them; if the housing comes first, that would allow a good environment for the rest of the people who want their businesses developed or changed; and he recommended that the City do that although it would adversely impact his business.

Rob Means said he hadn't been present for the entire presentation and, therefore, did not get all the numbers and asked what Santa Clara County would be paid for the property. City Attorney Mattas responded the amount that would ultimately be paid to the County would be \$270 million over the length of the agreement (through 2038). Mr. Means said it seemed like it was more than the value of the land. Mr. Mattas explained the numbers and how the purchase would actually bring in tax increment revenue to the Redevelopment Agency.

Carmen Montano said she was wearing four hats (Santa Clara County Open Space Advisory Commission, an advocate for neighborhoods, and advocate for kids, and a former Planning Commission member) and after looking at the plan, thought it was a good thing for the City but was highly compacted. Ms. Montano expressed concern that the children who live in the area had not had a park for 20 years, was disappointed that no allowance was made for that community; was hoping that maybe with this new development there would have been a park there for those kids; she understood there would be a park across the street, but since this was a gated community, inquired how the kids would get to the other side of the street. Ms. Montano asked that some allowance be made for the safety of the kids to get across the street (whether it be a new signal light or a cross bridge/cross walkway).

Mayor Esteves commented that the information he received on this project was that it basically was compliant with respect to open space/park requirements; in fact, even if the Hetch-Hetchy area was taken out, he understood it was still compliant. Mr. Lindsay responded the project did require the use of the Hetch-Hetchy Park; however, they were exceeding the City's minimum open space requirements as established in the midtown Specific Plan; by improving additional sections of the Hetch-Hetchy area, they were exceeding the City's minimum requirements.

Councilmember Giordano commented that when she participated in the action of the Planning Commission on October 13, the issue regarding the lack of park space for the existing neighborhood was brought up; she recalled it was part of the Commission action to direct staff to come back with the possibility of a location of a park and was curious to find out if that had happened yet. Mr. Lindsay responded in response to the Commission's recommendation, staff

had provided an exhibit that reflected the Commission's recommendation, which was to relocate the open space on Parcel D that was currently proposed against Abel Street, double it size and place it in the center of Parcel D; and a condition of approval for a \$1 million contribution towards future park improvements at the Cracolice site would benefit the entire neighborhood. Councilmember Giordano asked if the direction of the Planning Commission was being pursued and had it gone back to the Planning Commission to satisfy their need to look for additional park space. Mr. Lindsay said it was really up to the Council; the Planning Commission did request the Council look at providing additional areas for parks in the neighborhood; staff was recommending that the provision of the \$1 million and the commitment to have the Cracolice site be for long-term recreational purposes would fulfill that commitment or the direction the Planning Commission provided. Councilmember Giordano said she would like to see that possibility as a part of this evening's action – that those avenue continue to be pursued and at least brought back to the Planning Commission and on to the Council at some later point to see if there were some other possibilities to satisfy their needs.

Carmen Montano again addressed the Council and inquired if the Hetch-Hetchy Park was a public park, did the City maintain that park or did the developer, and if that park was provided by the developer or were they just piggy-backing on it; if they weren't using the Hetch-Hetchy park land, would their park land formula be satisfied. Mr. Lindsay responded the City would take on the maintenance of all the public parks within the area; as part of the Disposition and Development Agreement, the developer agreed to the initial formation of a District that would help provide funds for the maintenance of the facilities and staff felt that would be covered; and would the developer meet the park requirements without the Hetch-Hetchy -- the answer was no, that was not the intent of the original concept of the development; one of the major backbones of the Purchase and Sale Agreement was to maximize the development value and to have the Hetch-Hetchy serve as the open space component for this development, which was consistent with the Midtown Specific Plan, which encouraged the use of trails and existing public rights-of-way to provide open space for in-fill developments.

A lady said she was one of the residents who met with KB Homes to give input about some of the amenities they wanted changed to the Hetch-Hetchy Park; she hoped the Council would take into account their suggestions (the elimination of some amenities to open the lawn area making it wider to make it more of a park that would be usable for kids).

Jarred inquired if it was possible to propose a skateboard park in the public park, especially since the closure of Van's; he understood it was on the Hetch-Hetchy right-of-way; he had come across skateboard builders from Oregon that he thought made quality parks and if the Council was interested in looking at this organization, he had some paperwork.

Ted Weller inquired if there would be any permanent structures on the top of the Hetch-Hetchy right-of-way (tennis courts, picnic tables, etc.) as he was under the impression the Hetch-Hetchy didn't allow that type of thing. Mr. Weller said his primary reason for being present was the Elm trees; he had heard that they would be taken down and destroyed; he thought those trees could be maintained and brought back because they have been there a long time, they have a good root base, and he thought they would come back and be hearty. Mr. Weller commented that some of the Elm trees needed work, it would take a highly trained group of people to do it, but he would like to see those trees remain as they are. Mr. Weller expressed concern that too much has been destroyed in this city over the last 50 years, asked that the Elm trees be left and taken care of, and if some need to be taken out, just take every other one or every second tree in order to maintain the grove.

A man who spoke earlier inquired if anyone was looking into the impact on the two schools in the area.

Rob Means again addressed the Council inquiring if there would be easy access by pedestrians/cyclists. Mr. Lindsay responded there would be a number of pedestrian linkages throughout the development.

Mayor Esteves read into the record a letter he had received regarding the Elm trees in which the writers felt the best course of action would be to memorialize them by replacing them all now.

MOTION to close the public hearing.

M/S: Giordano, Gomez.

Ayes: 4

Absent: 1 (Livengood)

Councilmember Giordano said she had spoken very passionately about the park space at the Planning Commission meeting, she did realize that it exceeded the requirements, and was comfortable with the linear park and the configuration. Councilmember Giordano further stated she understood the residents concerns and was fine with redesigning some of the areas and inquired how that could be done tonight. Mayor Esteves inquired if any changes the Council made now would be part of the conditions or a specific recommendation. Mr. Lindsay said that could be included within the motion and if passed, would be incorporated within the record and those changes then would be made in the project.

Mr. Panek reviewed the main points brought up regarding the elimination of some of the slope and landscape planting on the Hetch-Hetchy to gain another 20 to 30 feet of width for lawn space, the grouping of picnic tables and shade structures with the idea of providing more unobstructed lawn area, the basketball courts (whether there be two half courts or two half courts and a full court), the need for two tennis courts, and said they were amenable to redesigning those changes. Mr. Panek said there had also been talk about the crosswalk that was needed to bring the neighborhood so that the parking area did not have to be passed; he felt that looking at the meandering of the trail was a good idea with the thought of trying to maximize the amount of turf area. Mr. Panek pointed out the location of the sand volleyball court, showing that it would disrupt the continuity of the green space, and said they would like to eliminate it.

Councilmember Giordano said she thought it was key for the developer to increase the width and decrease the landscaping and expressed concern that the changes not fall through the cracks.

Mr. Lindsay said if it was the Council's desire, the motion could provide staff the direction (maximize green space, remove volleyball court, clustering the picnic tables) to work out the details with the developer to insure that those performance standards are met.

Mayor Esteves inquired if the developer was providing any public art objects. Mr. Lindsay responded that public art had not been incorporated into any of the conditions. Mayor Esteves asked what the developer thought of public art as part of the development. Mr. Panek said he thought they could certainly design in areas where public art might be appropriate; the developer was also planning on doing some kind of historic commemoration of the Elm Grove in addition to simply replacing the grove; and he did not see a problem with looking into adding a piece of art like that located in front of City Hall into the design of the play areas in the park.

Councilmember Polanski, referring to the arborist reports, said she did not object to seeing all 55 Elms go after reading about the danger and hazards those trees could cause; she wanted to stress having something really significant so anyone in the City, as well as visitors, would understand the history of the Elm Grove; and hoped it would be something that would catch one's eye and would memorialize it. Councilmember Polanski commented that overall, she was pleased with the project and appreciated everybody working together to make it a good project.

Mayor Esteves asked for a summary of the additions to the existing conditions. City Attorney Mattas recommended that the Council follow the order of the actions in the Council's packet but suggested first that staff summarize the issues just discussed, which were modifications to the Plan, to get consensus on them; they could then be incorporated as direction to staff in the Conditions of Approval for the project.

Mr. Lindsay outlined the following additional conditions:

- (1) Removal of the volleyball court on the Hetch-Hetchy (south of Parcel D) to maximize the lawn area;
- (2) Incorporate a full length (full court) basketball facility and one half-court at the same location;

Vice Mayor Gomez expressed concern with the full court because of its attractiveness to organized play (citing Gill Park as an example) and suggested leaving two half-courts. Councilmember Polanski agreed commenting that it was one of the concerns of the Parks, Recreation & Cultural Resources Commission. Councilmember Giordano said she would prefer the full court because that was what the neighborhood wanted. Mayor Esteves said he would prefer to have the full court and asked if someone would compromise. Councilmember Polanski and Vice Mayor Gomez agreed with the full court. .

Mr. Lindsay continued, noting that the basketball court would be kept at the same location:

- (3) Maximize the lawn area and reduce the amount of landscaping on the slopes;
- (4) Cluster the picnic areas, providing more open space between the picnic areas;

Mr. Lindsay said the rest room facility was another issue that had been brought up. Mayor Esteves inquired how much the rest rooms would cost after putting in the infrastructure. Mr. Lindsay said staff was more concerned with the ongoing maintenance costs and asked Mr. Cuciz if he had cost information. Mr. Cuciz said it would be an additional cost; however, if you are going to put in a full basketball court, it almost requires a rest room. Councilmember Polanski said she was still in favor of the rest rooms; Councilmember Giordano said she wanted to hold off. City Attorney Mattas suggested that a condition could be added that prior to a Certificate of Occupancy for the 80th percentile unit, the issue of the rest rooms would come back to either the Planning Commission or the City Council for a decision regarding installation so that decision could be pushed out to a later date. Councilmember Giordano said she would change her vote to put in the rest rooms.

Councilmember Giordano asked about conditioning staff to come back and look at additional park space for the neighborhood commenting that she would like to see that. Mr. Mattas clarified that would be direction to staff as opposed to a condition for the developer.

Mr. Lindsay continued:

- (5) Additional improvements (Parcel D) to facilitate pedestrian access near the gates to allow pedestrian crossings across the public street;
- (6) New sidewalk (north side of the Hetch-Hetchy) to get to the play area;

Mr. Lindsay, referring to Councilmember Polanski's question on a substantial memorial, reported the EIR did talk about a commemorative historic display to be incorporated within the Elms Park; staff expected the features of the display would come back to the PRCRC and Council before installation so they meet with the approval of the Council. Mr. Lindsay said that was the end of his issues.

City Attorney Mattas inquired about the comment whether or not there would be a piece of public art incorporated into the project. Councilmember Polanski said she would like to see it

incorporated. Mayor Esteves said he would like to add a significant piece to memorialize the Elm Grove, something that is very visible. Mayor Esteves said he would also like a piece of public art in addition to the one in the Elm Grove.

Vice Mayor Gomez said he thought that prior to requiring developments to dedicate public art, the Council should have a policy in place first (to be consistent); he thought it should be addressed as a matter of policy first before requiring developers to dedicate public art. Mayor Esteves said if it wasn't addressed now, it would be gone forever.

Mr. Panek said he wasn't sure anyone tonight could commit to putting a piece of artwork on the Hetch-Hetchy right of way and thought it would be simpler to stay focused more on the Elm Grove Park than trying to get another approval by the PUC to put a piece of public art on their open space. Mayor Esteves suggested the open space in the parcel. Councilmember Giordano said she didn't believe we need to condition this project on artwork at this time, it was something that could be looked at in the future, but she didn't believe it was appropriate to do for this particular project; the other item talked about was the money set aside for the Cracolice and inquired if that was anything that needed action tonight. Mr. Mattas responded that was included in the DDA.

Mayor Esteves said his position was that in addition to a memorial for the Elm Trees, an additional public art piece be located somewhere. Councilmember Polanski said she was in agreement.

Mr. Panek said they knew they had to memorialize the Elm Grove, and he would commit \$30,000 to investing in a piece of public art, whether they bought it during the life of this project or if it wasn't decided by a certain time, they could give the City's art fund the money for the City to make the decision.

Mayor Esteves said he was happy with the gesture. City Attorney Mattas recommended since the Council had consensus on the additional conditions, those could all be in the form of direction to staff to amend the PUD conditions.

MOTION to adopt Resolution No. 7498 of the City Council of the City of Milpitas approving the General Plan and Midtown Specific Plan Amendments.

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

Mr. Lindsay read the title the title of Ordinance No. 38.765.

MOTION to waive the reading beyond the title.

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

MOTION to introduce Ordinance No. 38.765 (ZC2003-2) relating to the Zoning Ordinance Map changes.

M/S: Polanski, Gomez. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve the Elmwood Vesting Major Tentative Map (MA2003-4), Planned Unit Development No. PD2003-1, with conditions of approval as amended to incorporate the additional items the Council came to consensus on, 'S' Zone (SZ2003-6) and Use Permit No. UP2003-26, based on the findings and special conditions contained in the Council's agenda packet dated December 8, 2004, as amended as they relate to the PUD.

M/S: Giordano, Polanski. Ayes: 4 Absent: 1 (Livengood)

MOTION to adopt Resolution No. 7499 of the City Council of the City of Milpitas approving the Disposition and Development Agreement between the Milpitas Redevelopment Agency and KB Homes South Bay Inc. and approving the Reuse Report required by Health and Safety Code Section 33433, and adopting findings in connection with such sale.

M/S: Giordano, Polanski.

Ayes: 4

Absent: 1 (Livengood)

MOTION to adopt Resolution No. RA232 of the Milpitas Redevelopment Agency approving the Disposition and Development Agreement between the Milpitas Redevelopment Agency and KB Homes South Bay Inc. and approving the Reuse Report required by Health and Safety Code Section 33433, and adopting findings in connection with such sale.

M/S: Polanski, Gomez.

Ayes: 4

Absent: 1 (Livengood)

***RA6.
LIBRARY UTILITY
IMPROVEMENT PROJECT**

Appropriated the monies received from the Apton Properties, LLC totaling \$169,910.00 into Project No. 8153 and \$12,359 into the General Fund.

***RA7.
SENIOR CENTER
RENOVATION**

Awarded the acoustical ceiling and supporting frame system replacement contract to Ranis Construction & Electric Inc. in an amount not to exceed \$19,389.41

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:35 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**4.
Commission Vacancies**

Mayor Esteves said he placed this item on the agenda to announce to the public the current vacancies for all City Commissions and to encourage residents to apply. The Mayor said he planned to make recommendations for appointments at the February 15, 2005, Council meeting and would be looking at all Community Service applications filed by February 8, 2005. Mayor Esteves asked for clarification that there were one or two vacancies on the Economic Development Commission since he had received a resignation letter from Michael Pham. City Clerk Gail Blalock responded that would make two vacancies on the Economic Development Commission and she also had just received a resignation letter from Robert Finnie from the Citizens Emergency Preparedness Advisory Commission.

Mayor Esteves read the list of vacancies and encouraged residents to apply.

**5.
Memorial for
Neil MacKenzie**

Mayor Esteves said he placed this item on the agenda for official Council consideration of a memorial for Neil MacKenzie and suggested staff be directed to work with the Sunnyhills Neighborhood Association, which included Mr. MacKenzie's family, and possibly the Chamber of Commerce and return to the Council with suggested proposals.

MOTION to refer consideration of an appropriate memorial for Neil MacKenzie to the Council's Facilities Naming Subcommittee, encouraging the Subcommittee to get input from Mr. MacKenzie's family, the Sunnyhills Neighborhood Association, and the Chamber.

M/S: Esteves, Gomez/

Ayes: 4

Absent: 1 (Livengood)

**7.
Memorial for
Barbara Lee**

Councilmember Giordano placed this item on the agenda to consider an appropriate memorial for former Councilmember and Vice Mayor Barbara Lee and said she concurred with the recommendation.

Richard Lee thanked the Council for considering a memorial to his mother stating that she

loved the City and would be proud to be honored.

MOTION to refer consideration of an appropriate memorial for former Councilmember Barbara Lee to the Council's Facilities Naming Subcommittee.

M/S: Giordano, Gomez.

Ayes: 4

Absent: 1 (Livengood)

UNFINISHED BUSINESS

8. Council Handbook Amendments

City Attorney Steve Mattas reported this item was a follow-up to the Council's prior direction; the agenda packet included the amendments to the City Council Handbook that were recommended and reflected the process by which the Appointment Subcommittee would make recommendations to the Council and, assuming the Mayor's concurrence, they would be put before the Council for action; he was not sure that he fully understood exactly what the Council's position was with regard to City commissions but was very clear on Council committees, ad hoc committees, and outside agency representatives; and the amendments before the Council had the Subcommittee involved in all of those activities and also reflect a role for the Subcommittee in commission appointments, as well.

Mayor Esteves said the Council had already done the agencies, but he thought the Council received a memo from the City Attorney that said with respect to board and commission appointments, by state law, an elected Mayor should be able to make the recommendations for appointments, subject to approval by the Council; he would like to see it that way because he would not feel comfortable with a second layer of subcommittees selecting candidates for appointment that would then come to the Mayor; he would rather have the option of being able to look at all applications and make his recommendations and having another layer would be complicating a simple process. City Attorney Mattas said this was a Council policy decision in terms of how it wished to proceed; the state law provisions regarding appointments for directly elected Mayors did provide that the Mayor has the authority to make the recommendations, subject to confirmation of the Council; the way that all three of the provisions were written in the attachment assumed that the Subcommittee would meet, make their recommendations, present them at a Council meeting, and then with the Mayor's concurrence, they would then go forward to the City Council and that would apply under all three sets of circumstances (committees, outside agencies, and commissions); that was a way to both effectuate what he understood to be the Council's previous policy direction with regards to creation of this committee and at the same time respecting the role of the Mayor to actually formally make the nominations; it was an additional process but one that respected both procedures.

Mayor Esteves said he thought it was more than a Council policy decision because, based on what he read in the memo, the Mayor should be able to make recommendations for confirmation by the Council with or without a subcommittee being formed. City Attorney Mattas responded it was ultimately the Mayor's authority to make the recommendations; state law did not prevent the Mayor from receiving recommendations from a subcommittee that would be created, if that was what the Council wished to do.

Councilmember Polanski read from Government Code Section 40605 that "in General Law cities where the office of Mayor is an elective office, pursuant to Article 5 (commencing with Section 34900) of Chapter 7 of Part 1 of Division 2 of Title 4, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions, and committees unless otherwise specifically provided by statute." Councilmember Polanski said the only thing she knew of by statute was the Planning Commission; she had no objection to what a majority of the Council chose to do with Council liaison appointments, but when she was reviewing the tape of the Council meeting and reading the minutes, she was not aware that this also included commission appointments and was very surprised and dismayed when she read in the Youth Advisory Commission minutes Councilmember Livengood's statement that a subcommittee would now be making those appointments; she thought the process worked very well with the

Mayor reviewing all of the applications for commissions, the Council receives all of them in the agenda packet, and the Council has the ability to say no to those appointments; but based on the state law she read, the Mayor makes the appointments, the Mayor should review and then three of the Council can either say yes or no to those appointments.

Vice Mayor Gomez asked if "statute" was an ordinance. City Attorney Mattas responded he didn't believe the use of "statute" as provided in this section applied to local ordinances; it was state statutes. Vice Mayor Gomez asked if there was anything that would preclude the Council from forming a subcommittee. Mr. Mattas said he didn't disagree with the very express language of the Government Code Section cited, but it also doesn't prevent it; that was why when he wrote the Council Handbook provisions, he was very clear to say that the subcommittee would make it's recommendations known to the Council at a Council meeting; then with the Mayor's concurrence, those would be presented to the Council; if the Mayor elected not to present those recommendations, the Mayor could present his own recommendations and it would be up to the Council to vote as to the recommendations.

Vice Mayor Gomez said that was not what the Council said they wanted to do in December; they said they wanted a subcommittee formed to specifically make recommendations to the Council; the Mayor could make those recommendations and there was no reason the subcommittee couldn't do that, also. Mr. Mattas said what transpired at the first meeting in December involved his recommending to the Council that the Council receive some input from the Attorney's Office as to the appointment process; that had been provided in a memo to the Council that had been referenced and contained what he believed to be the state law requirements; his recommendation to the Council was that its process incorporate the role of the directly elected Mayor and that can be done by either having the Mayor make the recommendations and then the Council takes action on those recommendations or if the Council wishes to have a subcommittee make recommendations, that could be done, but those recommendations are presented to the Mayor and Council at a Council meeting and if the Mayor concurs, then they go forward to the Council.

Councilmember Giordano commented that was the intention and the spirit of the motion was to form a subcommittee and have those recommendations brought forward; what she didn't see and was a little unclear about (on page 32 of the Handbook) was does this subcommittee then present the recommendations to the Mayor and the City Council at a City Council meeting at which time, with the Mayor's concurrence, the recommendations for appointments are presented to the Council by the Mayor for confirmation, and asked if there was no way to have a subcommittee report without the Mayor allowing that to travel through? Mr. Mattas responded he thought to be consistent with Section 40605, you do have to pass the recommendations through the Mayor and the Mayor has to be prepared to make those recommendations; if the Mayor's not prepared to make those recommendations and recommend someone else, then it's up to the Council, by majority vote, to decide whether or not it will confirm or deny those recommendations; if the Mayor concurs, then they are presented to the Council and the Council can vote on them. Councilmember Giordano said that was not what she voted for and thought that was the whole purpose of the subcommittee.

Mayor Esteves said that was why when that item was on the agenda, he asked to hear from legal counsel on the issue of the Mayor's appointments and that was why the Council's received the memo to clarify that portion; he would prefer to see all of the applicants and if he still had the option of recommending somebody outside of the subcommittee, it would make the subcommittee's action futile in a sense that he would still be selecting from the full market.

Councilmember Polanski referred to the minutes for the January 4, 2005, Council meeting, and commented that based on the memo she read, there is state law that allows the Mayor to make these appointments, it was clear that a majority of the Council wished to usurp that authority of the Mayor and overlook state law, and the process can work very well the way it has, and she was in agreement with everything to be added to the Handbook except for the

part about commissions because she didn't believe the Council had any right to put in a policy or ordinance or resolution against state law.

Councilmember Giordano asked Vice Mayor Gomez, as part of the Subcommittee, for confirmation they had met once and asked if the Subcommittee had reviewed these changes to the Handbook. Vice Mayor Gomez said the Subcommittee had met but the changes were not brought to the Subcommittee; he thought it might be beneficial for the Subcommittee to look at them and make a recommendation to the Council. Councilmember Giordano said that was what she would like to see. Vice Mayor Gomez said it was clear that the Council wasn't going to get anywhere tonight and since it was getting late, suggested it be pushed out a couple of weeks and discussed at the next meeting.

Councilmember Polanski pointed out that at the last meeting, the Council directed the City Attorney to make the changes to the Handbook and to bring them back to the Council for a decision, and she didn't believe there was a City Council Handbook Subcommittee.

Mayor Esteves said he didn't think it was the prerogative of the City Council to usurp state law and he wanted a legal opinion on that; he thought a second opinion should be obtained because he wasn't comfortable with what was going on. Councilmember Polanski concurred.

City Attorney Mattas asked if it was the Council's desire for him to obtain a second opinion for the Council; he had provided his opinion on this issue; if the Council desired a second opinion on the issues presented in his opinion, he would be happy to arrange that and he wanted to be clear that the way the Handbook changes were created, which may or may not be satisfactory to any of the Council, was not in his opinion usurping the state law provisions but he understood and if the Council desired, he would be happy to provide a second opinion and have that sent directly to the Council for review; as to whether you could have an issue similar to the approach that had been identified, it was his opinion that the subcommittee could not directly make recommendations; he did think the Mayor has to be involved in the recommendations; he wanted to make sure for efficiency purposes if a second opinion was to be obtained, did the Council want a second opinion on both of those issues or just whether or not what had been proposed in the Council Handbook satisfied state law.

Mayor Esteves said he was serious about this responsibility, he didn't want to be just a rubber stamp person, it was the Mayor's responsibility to make a good recommendation, and he would not be able to do that if the subcommittee's recommendation is presented at a Council meeting.

City Attorney Mattas said it appeared clear to him that the resolution he provided to the Council was not satisfactory to anyone; it may be the Council wished to find another way to address it, to get a second opinion, or to create a committee to potentially look into some way where both interests could be addressed; there were other ways to do this, but they were inherently policy decisions of the Council and so ultimately the Council needed to decide how it wished to do that within the confines of state law; he had presented one way, which he thought was lawful; if it was not acceptable to either side, then we should go back and try to find another way to do this, if that was the Council's desire.

Vice Mayor Gomez said that was his desire as he thought the Council wasn't going to get anywhere tonight.

Mayor Esteves said in the meantime, he had his schedule of seriously looking at all applications as of February 8th and making recommendations by February 15.

**9.
Final Ethics Survey/Training**

Acting Planning Director Heyden reported the final survey was one of the deliverables under Dr. Shanks' ethics project contract and the result of the survey would be included in Dr. Shanks' final report; the initial survey done in March last year was distributed online for completion by a random sample of households; the responses were statistically significant,

however, this time a greater number of respondents was desired; the Steering Committee was proposing the survey also be included in the Milpitas Post using a tear-out/mail-in format that would also be available online; the intent of the survey was to determine the effectiveness of the ethics program in building public trust and to gauge how well Milpitas public officials are doing practicing the City's ethics values of honesty, respect, fairness, stewardship, teamwork, and accountability. Ms. Heyden said Dr. Shanks was available to answer specific questions about the survey and would also explain a couple of changes he had made to the survey to make it more useable in the paper; the second part of the agenda item had to do with completing the training for Councilmembers and the commissioners; the Council had set its final training session for November 17, 2004, which was delayed given that a new Councilmember was added as a result of the election; regarding the commissioner training, 74 of 125 commissioners had attended the two training sessions offered, and the Steering Committee was recommending that a second make-up session be offered as soon as possible.

Dr. Thomas Shanks pointed out a couple of changes he had made in the survey stating that a couple of screening questions had been added to encourage people to fill out just one survey; a change was also made in question 6 -- regarding how much people trust the Council and how much people trust City employees, which would mirror how the questions were asked in the first survey; question 12 was broken out a little more -- to determine how important were these various sources when you thought about the candidates; and the last part of question 14 included how important did people think it was for the City to continue to develop an ethics program and that was now at the end of question 14.

Ms. Heyden summarized that the Ethics Steering Committee was recommending to approve the Ethics Survey, set the date of February 8 at 6:00 p.m. for a special meeting for final ethics training for the Council, and set a date for a second ethics training make-up session for commissioners.

Councilmember Giordano said she attended one training session as a Planning Commissioner and she thought there was a make-up session, so she assumed make-up sessions were available. Dr. Shanks responded there was one make-up session.

Vice Mayor Gomez said he was a little concerned about some of the questions in the survey and the way they were structured because they appeared to be fishing for an answer; what he didn't want to happen was for the data to be skewed; what seemed to be skewing the data was the appearance the survey was going for quantity opposed to quality, and it was not statistically random; he thought sending it out through the Milpitas Post and just the areas it hits would not be hitting the entire community and that concerned him. Dr. Shanks asked for clarification that because the survey would be in the Milpitas Post, that would be skewing the questions. Vice Mayor Gomez responded yes, given the Post took a stance against the Political Action Committee, supported certain candidates, and the people who are filling out the survey are readers of the Post, that would result in skewed answers. Dr. Shanks said he didn't know, but it seemed like people in Milpitas don't necessarily, like any other place, listen to the suggestions that the newspaper makes. Vice Mayor Gomez said not everybody reads the Post, but if you are just putting it in the hands of the Post and just distributing to those people who read the Post, he thought you were more likely to get responses that shared the same view as the Post, and asked if Dr. Shanks agreed. Dr. Shanks said not necessarily. Vice Mayor Gomez asked if Dr. Shanks thought it was a random sampling and statistically valid. Dr. Shanks responded this was not a random sample; this would be a sample that was relatively easy to get in a short period of time; his preference would always be to do a random sample, but what was found last time with the random sample only 200 people responded but they were, in fact, reflective of the community. Vice Mayor Gomez asked if it's not statistically valid or not a random sampling, what value does it add. Dr. Shanks said he thought if you got 2,000 people, you would be finding out what 2,000 people in Milpitas thought about the ethics program and its success or effectiveness up to now. Vice Mayor Gomez said his personal preference would be to have quality over quantity. Dr. Shanks said both could be done because the survey would also be online, if that would be the preference,

and that could test whether there would be a difference between the controlled group and the Milpitas Post group. Vice Mayor Gomez said he was having trouble seeing the value in the survey.

Councilmember Polanski asked if there were any other ways the Steering Committee was looking at to get feedback or to get the survey out to the public. Ms. Heyden responded the Steering Committee had not identified any other sources. Councilmember Polanski said she thought some of the questions might be somewhat uncomfortable, some people may answer in different ways, but she thought one of the main things we want to get out of it was do people even know there was an Ethics First and that there was some kind of an ethical program taking place; one of the things she heard at the League of California Cities Conference was you need to keep building on it and move forward, you can't just do it, forget about it and wait until the next election. Councilmember Polanski further stated she thought some of the questions may be uncomfortable for some people, but she thought they answered some of the questions that might be important for the community to know.

Dr. Shanks said when this was started, the goal was public trust, the first test really was going to be during the election to see if people could be made aware of the ethics program and its goals, to see what would happen with public trust, and to get some feedback on how well the City leaders were as role models; and that really was what the survey was trying to get at.

Mayor Esteves commented that the Post and online were just two ways people could fill out the survey but the key question really was how would you let people know that the survey is there to get maximum responses. Ms. Heyden responded in the past, press releases were used. Dr. Shanks said one of the things that needed to be decided was if the Council wanted to do a random sample survey in addition to what would be in the newspaper. Mayor Esteves said he thought the survey was long overdue and should be done to see how effective the ethics program has been.

Councilmember Giordano said she was disappointed with the survey and thought the instrument was flawed; she thought this wouldn't give a true reflection of what she believed the community as a whole felt about the issue; she could not support spending taxpayer dollars tonight to place this survey in the Milpitas Post to receive random data from an inadequate survey document; the City had spent about \$65,000 for consulting services in this area; and this proposed survey and the manner in which the data would be collected raised severe questions in her mind as to whether there was value in the money that was being spent. Dr. Shanks asked if the survey was not in the Milpitas Post and was done just by a random sample, what would the problems be with the survey instrument, commenting that any of the questions could be changed. Councilmember Giordano responded at this point, it was a monetary issue and not wanting to spend any more money.

Councilmember Polanski asked if this was all part of the contract with Dr. Shanks that was approved over a year ago or was there an extra cost for the survey. Ms. Heyden responded this was part of the contract. Dr. Shanks added that it was part of the first contract.

Mayor Esteves said he thought ethics was first and foremost in Milpitas because we have been proud to say before that even the City of San Jose was looking after the City of Milpitas Code of Ethics and this surely was a part of that process; he supported an ethics process, awareness, education, and a survey from residents so we are able to move forward and complete the process and improve our appreciation for ethics. Dr. Shanks said this was part of the original \$24,000 contract and also included all the training and the development of the code.

Vice Mayor Gomez said he wouldn't be supporting the survey; he had problems with several of the questions and again, if he didn't feel it was statistically valid, he didn't see any value to it.

Councilmember Polanski said she would like to move this forward, had no problem doing it statistically like was done before because that was one of the things Councilmember Livengood had brought up before the first survey that we needed to do a random sampling of community members; she thought that was important and thought it important that the contract had already been agreed to and approved on a 5/0 vote and part of that was to have this final ethics awareness survey, so she would like to see this go forward with the final survey that is statistical, that uses a random sample, have staff set up a date for one more training session for commissioners, but she would prefer not to set the February 8 date until there was a full Council to decide on what date would be appropriate;

MOTION to move forward with the final ethics awareness survey as agreed to with the original contract with Dr. Shanks, to do a statistical survey, and direct staff to set a date for a training session for commissioners.

M/S: Polanski, Esteves.

Vice Mayor Gomez said he would be voting no as he still had problems with several of the questions and thought the Council should decide what it wanted to do with the Ethics Program first before having commissioners participate in any more training sessions.

Councilmember Polanski said the training sessions weren't additional costs and it was all part of the contract as well, but it appeared ethics were not as important these days.

VOTE ON MOTION: Ayes: 2 (Esteves, Polanski) Noes: 2 (Giordano, Gomez)

City Attorney Mattas noted the motion failed.

Councilmember Polanski thanked Dr. Shanks and the Steering Committee for their extra efforts over the last several months. Mayor Esteves said he really valued ethics in our city and it was disappointing that this was a gesture of not valuing the importance; he voted for the ethics program, the whole Council voted for it, and he intended to complete it because of the infinite value to the city, to the people of the city, and without the survey, it was like an incomplete process.

Ms. Heyden asked for clarification that the Council wanted Dr. Shanks to proceed with his final report due according to his contract minus the results of the survey that he would have incorporated. Vice Mayor Gomez said that was the item he pulled off the Consent Calendar for discussion.

NEW BUSINESS

12. O'Toole Elms Cultural Resource

Vice Mayor Gomez removed this item from the Consent Calendar and said given what the Council had decided to do concerning the Elms, what did that do for this item. Acting Planning Manager James Lindsay responded nothing at all; their cultural significance to the city had been acknowledged, they would be commemorated in some way and with the replacement of the Elm Grove and incorporation of the historic display, and this just added another layer of acknowledgment of the contribution that the Elm Grove has played within the City.

MOTION to designate the site of the O'Toole Elms as a City Cultural Resource.

M/S: Gomez, Giordano. Ayes: 4 Absent: 1 (Livengood)

ORDINANCES

13. Ordinance No. 267

Acting Planning & Neighborhood Services Director Heyden reported this item was also postponed from the December 21, 2004, City Council meeting and was prepared pursuant to

Lobbyist Registration

the Council's approved contract with Dr. Shanks and the Implementation Plan; the ordinance was reviewed by the Community Advisory Commission and the Ethics Steering Committee and goes beyond the existing lobbyist registrations in the current Open Government Ordinance and would repeal the existing regulations;. Ms. Heyden further reported that Mr. Pio Roda of the City Attorney's Office would be presenting the details of the ordinance followed by Dr. Shanks, who would point out the comparison between the existing regulations and what this ordinance proposed.

Richard Pio Roda reviewed the mechanics of the Lobbyist Registration Ordinance explaining definitions, exceptions from registration, registration requirements for lobbyists, annual fees, quarterly disclosure requirements, specific prohibitions, the complaint process, and penalties.

Dr. Thomas Shanks explained the difference between this ordinance and the current ordinance commenting that right now there were a couple of paragraphs in the Open Government Ordinance that define a lobbyist, but it was not very clear; this took the heart of that ordinance and expanded it, made it something that could be managed relatively easily and had the benefit of letting citizens know how their government is, in fact, being influenced (if it is) and encouraged independence of judgment in the face of what lobbyists do; the important thing was citizens having the ability to know who is trying to influence and by what means.

Vice Mayor Gomez said the Council would be looking at an Open Government Ordinance in a couple of weeks that included a lobbyist component; his preference would be for the Council to look at that ordinance and see if they want to incorporate any of this lobbyist ordinance into that and deal with it then.

Councilmember Polanski said she would have no problem with that except in reading the Open Government Ordinance that will be coming back to the Council, the part about lobbyists was very limited and it also mainly talked about lobbyists that the City would hire; she didn't think that fit very well with the desire for open government; as was stated, some of the cities around have ordinances such as this, she felt this one was comprehensive, was easily read, and was something this City definitely needed as it goes into its 51st year; it definitely would show that this Council is open, is looking at insuring that the public has a right to know who is doing business with us, and usually lobbyists have no problem registering if they are doing ethical business within the community. Councilmember Polanski said she had no problem in supporting this.

Mayor Esteves said he did look at the Open Government Ordinance that will be coming to the Council next month; he shared the same comments that it was very limited and this one was very extensive; it could be made a part of that open government because this was well done, a good comparison with other cities, it touched more things, and he supported this ordinance and wanted to make it part of the Open Government Ordinance that would be coming to the Council.

Councilmember Giordano said she had reviewed them, there were a few components regarding criminal activity that she was a little troubled with and would like to study this further, bring it into the veil of looking at the open government issue where we have the lobbyist component, and she would not be supporting the ordinance as it was written tonight.

MOTION that Ordinance No. 267 as presented be incorporated into the Open Government Ordinance that will be returning to the Council at a later date.

M/S: Polanski, Esteves. Ayes: 2 (Esteves, Polanski) Noes: 2 (Giordano, Gomez)
Absent: 1 (Livengood)

BIDS & CONTRACTS

16. Amendment No. 3 Consulting Services Agreement (Dr. Thomas Shanks)

Acting Planning Director Heyden reported this item was brought forward because of the postponement of the survey and given that the survey would not be done, there may not be the need to extend the contract expiration date with Dr. Shanks.

Vice Mayor Gomez inquired what timeline would Dr. Shanks be looking at given the Council decided not to do the survey. Dr. Shanks requested an additional two weeks to complete the final report.

MOTION to approve Amendment No. 3 to the Consulting Services Agreement between the City of Milpitas and Dr. Thomas Shanks Consulting to extend the contract expiration date to February 15, 2005, and postpone the due date of the final report to February 15, 2005.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:11 p.m.

Gail Blalock
City Clerk